

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 01, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

HOLLY R.,¹

Plaintiff,

v.

MARTIN O'MALLEY, Commissioner of
Social Security,²

Defendant.

No. 4:23-cv-05107-EFS

**ORDER REVERSING THE ALJ'S
DENIAL OF BENEFITS, AND
REMANDING FOR FURTHER
PROCEEDINGS**

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

² Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, and section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), he is hereby substituted for Kilolo Kijakazi as the defendant in this suit.

1 Due to bilateral knee pain, arthritis, chronic fatigue, foot pain, anxiety,
2 panic attacks, depression, and carpal tunnel syndrome, Plaintiff Holly R. claims
3 that she is unable to work fulltime and applied for supplemental security income
4 benefits. She appeals the denial of benefits by the Administrative Law Judge (ALJ)
5 on the grounds that the ALJ improperly analyzed the opinions of Rikki Cook,
6 LMHC, and David Davis-Boozler, MD; and the ALJ improperly assessed Plaintiff's
7 credibility. As is explained below, the ALJ erred. This matter is remanded for
8 further proceedings.

9 I. Background

10 In November 2019, Plaintiff filed an application for benefits under Title 16,
11 claiming disability beginning January 1, 2019,³ based on the physical and mental
12 impairments noted above.⁴ Plaintiff's claim was denied at the initial and
13 reconsideration levels.⁵

14 After the agency denied Plaintiff benefits, ALJ Palachuk held a telephone
15 hearing in June 2022, at which Plaintiff appeared with her representative.⁶
16 Plaintiff and a vocational expert testified.⁷

18 ³ This was later amended to October 15, 2019, as noted below.

19 ⁴ AR 183-194, 215.

20 ⁵ AR 88, 101, 104.

21 ⁶ AR 36-58.

22 ⁷ *Id.*

1 After the hearing, the ALJ issued a decision denying benefits.⁸ The ALJ
 2 found Plaintiff's alleged symptoms were not entirely consistent with the medical
 3 evidence and the other evidence.⁹ As to medical opinions, the ALJ found:

- 4 • The opinions of state agency evaluators Matthew Comrie, PsyD, and
 5 Patricia Kraft, PhD, to be not persuasive.
- 6 • The opinions of state agency physicians Robert Stuart, MD, and
 7 Gordon Hale, MD, to be not persuasive.
- 8 • The opinions of consultative examiner Linda Lindman, PhD, to be
 9 somewhat persuasive.
- 10 • The opinions of David Davis-Boozler, MD, to be somewhat persuasive.
- 11 • The opinions of Rikki Cook, LMHC, to be not persuasive.¹⁰

12 As to the sequential disability analysis, the ALJ found:

- 13 • Step one: Plaintiff had not engaged in substantial gainful activity
 14 since October 15, 2019, the date of her application.
- 15 • Step two: Plaintiff had the following medically determinable severe
 16 impairments: degenerative joint disease, bilateral knees;

19 ⁸ AR 15-33. Per 20 C.F.R. § 416.920(a)–(g), a five-step evaluation determines
 20 whether a claimant is disabled.

21 ⁹ AR 27-32.

22 ¹⁰ AR 25-26.

1 patellofemoral arthritis, right knee; depression; and adjustment
2 disorder.

- 3 • Step three: Plaintiff did not have an impairment or combination of
4 impairments that met or medically equaled the severity of one of the
5 listed impairments.

- 6 • RFC: Plaintiff had the RFC to perform light work with the following
7 exceptions:

8 She can frequently crouch and crawl but can only occasionally
9 kneel. She is able to understand, remember and carry out
10 simple, routine tasks; can maintain concentration, persistence
11 and pace for 2-hour intervals between regularly scheduled
12 breaks; and requires a predictable work environment with
13 seldom change.

- 12 • Step four: Plaintiff has no past relevant work.
- 13 • Step five: considering Plaintiff's RFC, age, education, and work
14 history, Plaintiff could perform work that existed in significant
15 numbers in the national economy, such as a collator operator (DOT
16 208.685-010), merchandise marker (DOT 209.587-034), and family
17 storage rental clerk (DOT 295.367-026).¹¹

18 Plaintiff timely requested review of the ALJ's decision by the Appeals
19 Council and now this Court.¹²

21 ¹¹ AR 20-28.

22 ¹² AR 176.

II. Standard of Review

The ALJ's decision is reversed "only if it is not supported by substantial evidence or is based on legal error,"¹³ and such error impacted the nondisability determination.¹⁴ Substantial evidence is "more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."¹⁵

III. Analysis

Plaintiff seeks relief from the denial of disability on two grounds. She argues the ALJ erred when evaluating the medical opinions and when evaluating

¹³ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. § 405(g).

¹⁴ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. § 416.920(a) (recognizing that the court may not reverse an ALJ decision due to a harmless error—one that "is inconsequential to the ultimate nondisability determination").

¹⁵ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)). *See also* *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court "must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion," not simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) ("An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered[.]").

1 Plaintiff's subjective complaints.¹⁶ As is explained below, the Court concludes that
2 the ALJ consequentially erred in her evaluation of the medical opinion evidence.

3 **A. Medical Opinion: Plaintiff establishes consequential error**

4 Plaintiff argues the ALJ erred in her evaluation of the medical opinions.¹⁷
5 Specifically, Plaintiff first argues that the ALJ erred in finding the opinions of
6 LMHC Cook to be not persuasive because LMHC Cook never personally examined
7 Plaintiff, the opinions were inconsistent with the overall record, and the opinions
8 were specifically contradicted by the findings of the consultative examiner, Dr.
9 Linda Lindman, who was more qualified than LMHC Cook. Plaintiff also argues
10 that the ALJ erred in rejecting Dr. Davis-Boozler's limitation to walking for four
11 hours because her reasoning that the limitation was "vague" is not supported by
12 substantial evidence.

17 ¹⁶ Plaintiff also avers that these errors resulted in an improper determination at
18 step five.

19 ¹⁷ An ALJ must consider and articulate how persuasive she found each medical
20 opinion, including whether the medical opinion was consistent with and supported
21 by the record. 20 C.F.R. § 416.920c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th
22 Cir. 2022).

1 1. Standard

2 The ALJ was required to consider and evaluate the persuasiveness of the
3 medical opinions and prior administrative medical findings.¹⁸ The factors for
4 evaluating the persuasiveness of medical opinions and prior administrative
5 medical findings include, but are not limited to, supportability, consistency,
6 relationship with the claimant, and specialization.¹⁹ Supportability and consistency
7 are the most important factors,²⁰ and the ALJ must explain how she considered the
8 supportability and consistency factors when reviewing the medical opinions and
9 support her explanation with substantial evidence.²¹ The ALJ may consider, but is
10 not required to discuss the following additional factors: the source's relationship to
11 Plaintiff such as length of the treatment, purpose of the treatment relation and
12 whether the source examined Plaintiff, as well as whether the source had advanced
13 training or experience to specialize in the area of medicine in which the opinion

14
15
16 ¹⁸ 20 C.F.R. § 416.920c(a), (b).

17 ¹⁹ 20 C.F.R. § 416.920c(c)(1)–(5).

18 ²⁰ *Id.* § 416.920c(b)(2).

19 ²¹ *Id.* § 416.920c(b)(2); *Woods v. Kijakazi*, 32 F.4th a at 785 (“The agency must
20 articulate . . . how persuasive it finds all of the medical opinions from each doctor
21 or other source and explain how it considered the supportability and consistency
22 factors in reaching these findings.”) (cleaned up).

1 was being given.²² When considering the ALJ's findings, the Court is constrained to
 2 the reasons and supporting explanation offered by the ALJ.²³

3 2. Plaintiff's Testimony

4 On June 29, 2022, Plaintiff appeared with her attorney for a telephone
 5 hearing before ALJ Palachuk.²⁴ The Plaintiff testified and a vocational expert,
 6 Mark Mann, testified.²⁵ At the hearing, Plaintiff's attorney moved to amend her
 7 onset date to coincide with the protective filing date of October 15, 2019.²⁶ Plaintiff
 8 testified that in October of 2019 she was trying to do some in-home childcare but
 9 was not able to watch children properly due to panic attacks.²⁷ When she got the
 10 panic attacks, it was hard to do anything.²⁸ Plaintiff stated that she able to
 11 complete state training in 2021 to be paid by the state to care for the children of a
 12 friend.²⁹ Plaintiff said that she watched her friend's one-year-old and four-year-old

13
 14 ²² *Id.*

15 ²³ *See Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (recognizing court
 16 review is constrained to the reasons the ALJ gave).

17 ²⁴ AR 36-58.

18 ²⁵ *Id.*

19 ²⁶ AR 41.

20 ²⁷ AR 41-42.

21 ²⁸ *Id.*

22 ²⁹ *Id.*

1 children on a full-time basis until her friend moved to Utah.³⁰ Plaintiff said that she
2 started watching them at the friend's home but later watched them at her own
3 home to reduce the number of panic attacks.³¹ She said that she has panic attacks
4 four times a week.³²

5 Plaintiff said that when she has a panic attack she has a hard time
6 breathing and needs to be alone for thirty to forty-five minutes.³³ The coping
7 techniques do not always work and half of the time she does not fully recover for an
8 extended time.³⁴ She has missed appointments because she could not leave the
9 house due to a panic attack.³⁵ She said that if she was watching the children when
10 she had a panic attack she would put on a show for them and would then sit by
11 herself and try to calm down.³⁶ When the children were in the room, it took longer
12 to calm down.³⁷ Plaintiff said that she tried to do a day of shadowing a delivery
13
14

15 ³⁰ AR 43.

16 ³¹ *Id.*

17 ³² *Id.*

18 ³³ AR 44.

19 ³⁴ *Id.*

20 ³⁵ *Id.*

21 ³⁶ AR 45.

22 ³⁷ *Id.*

1 driver for Crumble Cookies.³⁸ If she were to get a job as a fill-in delivery driver she
2 would need to be able to bake, box, and deliver cookies.³⁹ Plaintiff thought she
3 would be able to do the job because it had limited public contact but on her first
4 day she had a panic attack.⁴⁰

5 Plaintiff said that eight percent of the time that she leaves home she will
6 have a panic attack so she is usually either late for her appointments or needs to
7 cancel them.⁴¹ She said that she needs to go home after being out for an hour.⁴²
8 Plaintiff testified that earlier in the year she had not been able to take her
9 medication because she did not have a primary care provider and her mental
10 health declined as a result, with her having more panic attacks.⁴³

11 Plaintiff testified that prior to her knee replacement surgery she could only
12 stand for twenty to thirty minutes a day, but that after the surgery she was able to
13 walk on it for up to twenty-five minutes a day and stand for longer.⁴⁴ Plaintiff said
14 that before the surgery she could only stand for up to thirty minutes about three
15

16 ³⁸ *Id.*

17 ³⁹ AR 45-46.

18 ⁴⁰ AR 46.

19 ⁴¹ *Id.*

20 ⁴² AR 47.

21 ⁴³ *Id.*

22 ⁴⁴ AR 48.

1 times a day and that after the surgery she could stand for that amount of time
2 about six times a day.⁴⁵ She testified that it took about six months of recovery after
3 the surgery for her to be able to stand or walk for that long.⁴⁶ Plaintiff stated that
4 she can lift ten to fifteen pounds and that her hand will go numb if she lifts more.⁴⁷
5 She also said that her knee will lock or give out if she lifts more than fifteen
6 pounds.⁴⁸ She said that when she was babysitting she would have the child crawl
7 into her lap so she did not need to lift them.⁴⁹ She said that her medication makes
8 it hard to focus and she has a hard time focusing when she is out in public with
9 more than three or four people.⁵⁰ She said that when she has a panic attack it is
10 hard to concentrate on anything.⁵¹ She said that sometimes she cannot focus for
11 the whole day and needs to lie down for about forty-five minutes to rest due to low
12 energy.⁵²

15 ⁴⁵ AR 48-49.

16 ⁴⁶ AR 49.

17 ⁴⁷ *Id.*

18 ⁴⁸ AR 50.

19 ⁴⁹ *Id.*

20 ⁵⁰ AR 51.

21 ⁵¹ *Id.*

22 ⁵² AR 52.

1 The ALJ asked the VE to assume that Plaintiff had a high school education
2 and no work experience.⁵³ VE testified that an individual of Plaintiff's age,
3 education, and work experience who was limited to light work, and with all
4 posturals performed frequently except for kneeling which would only be performed
5 occasionally, the individual could perform the following jobs: collator operator
6 (DOT 208.685-010), merchandise marker (DOT 209.587-034), and rental clerk
7 (DOT 295.367-026).⁵⁴ The ALJ then gave a second hypothetical in which the
8 individual would be limited to all postural occasionally, and would have the
9 following additional limitations: able to understand, remember, and carry out
10 simple tasks; could maintain concentration, persistence, and pace on simple
11 routine tasks for the two-hour interval between breaks; and needs to be in a
12 predictable environment with seldom change.⁵⁵ The VE testified that the three jobs
13 identified could still be performed.⁵⁶ The VE testified that the only aspect of his
14 testimony not addressed by the DOT was that regarding a predictable
15
16
17
18

19 ⁵³ AR 54.

20 ⁵⁴ AR 54-55.

21 ⁵⁵ AR 55.

22 ⁵⁶ *Id.*
23

1 environment.⁵⁷ He said that his testimony regarding a predictable environment
2 was based on his 30 years of field experience.⁵⁸

3 The VE testified that the individual could be absent one day per month and
4 off-task no more than ten percent.⁵⁹ He stated that an individual who took
5 unscheduled breaks of twenty to thirty minutes three times a week would not be
6 able to maintain employment.⁶⁰

7 3. Relevant Medical Records

8 a. Physical impairments

9 i. *Trios Health*

10 On March 12, 2019, Plaintiff presented to ARNP Joshua Anderson,
11 requesting a new referral for insurance purposes to Dr. Jacob Stanfield for her
12 knee.⁶¹ On examination, Plaintiff reported that she stopped seeing her psychiatrist
13 due to personality conflict and was recently experiencing depression and anxiety
14
15
16
17

18 ⁵⁷ *Id.*

19 ⁵⁸ *Id.*

20 ⁵⁹ AR 56.

21 ⁶⁰ AR 56-57.

22 ⁶¹ AR 342.

1 with fatigue.⁶² She was in no acute distress and was ambulating normally.⁶³ She
2 was diagnosed with pain in her right knee and major depressive disorder.⁶⁴

3 On March 28, 2019, Plaintiff presented to ARNP Anderson with complaints
4 of injury to her left wrist after tripping and falling.⁶⁵ On examination, she was
5 ambulating normally, was in no acute distress, and had tenderness to palpation
6 over the left distal ulna.⁶⁶ An x-ray indicated no fracture.⁶⁷

7 On May 13, 2019, Plaintiff presented to ARNP Anderson with acute
8 pharyngitis.⁶⁸ On examination, she had muscle ache, muscle weakness and pain in
9 her right shoulder with abduction and circumduction, and was tender on palpation
10 and was painful with abduction and extension beyond 90 degrees or with any
11 circumduction.⁶⁹

12
13
14
15 ⁶² *Id.*

16 ⁶³ *Id.*

17 ⁶⁴ AR 342-343.

18 ⁶⁵ AR 340.

19 ⁶⁶ *Id.*

20 ⁶⁷ AR 345.

21 ⁶⁸ AR 336.

22 ⁶⁹ AR 338.

1 On September 3, 2019, Plaintiff presented to Adam Smith, DO, at Trios
2 Health for an annual OB-GYN exam.⁷⁰ On examination, Plaintiff reported hot
3 flashes as well as knee pain and the need for a knee replacement.⁷¹

4 *ii. Kadlec Orthopedic*

5 On December 13, 2018, Plaintiff presented to Doyle Miller, MD, with
6 complaints of progressively worsening pain in her right knee.⁷² She reported
7 constant aching with a stabbing pain rated at a 9 out of 10, and swelling and
8 locking of the knee.⁷³ Plaintiff also reported that the pain was worse at night.⁷⁴ On
9 examination, Plaintiff was anxious with dysphoric mood and sleep disturbance;
10 and had tenderness to the medial joint line and medial patellar facet.⁷⁵ All results
11 were within normal limits other than tenderness in the patellar region.⁷⁶ Plaintiff
12 was sent for an MRI of the right knee, which revealed advanced degeneration of
13 the patellofemoral compartment with full-thickness chondral loss; large knee-joint
14
15

16 ⁷⁰ AR 331.

17 ⁷¹ AR 333.

18 ⁷² AR 407.

19 ⁷³ *Id.*

20 ⁷⁴ *Id.*

21 ⁷⁵ AR 408-409.

22 ⁷⁶ *Id.*

1 effusion; and degenerative free edge fraying of the lateral meniscal body.⁷⁷ Plaintiff
2 was diagnosed with right knee degenerative joint disease (DJD) with severe
3 patellofemoral arthritis.⁷⁸ Dr. Miller advised that Plaintiff should not have
4 arthroscopic surgery due to her age but should attempt to manage the condition
5 with conservative treatment and get a total knee replacement if her pain
6 persisted.⁷⁹

7 On March 13, 2019, Plaintiff presented to Jacob Stanfield, MD, following an
8 injection.⁸⁰ Plaintiff reported continued severe pain as a result of her “significant
9 patellofemoral osteoarthritis.”⁸¹ Dr. Stanfield noted that Dr. Miller felt
10 arthroscopic surgery would not be beneficial and noted that on examination
11 Plaintiff experienced tenderness in the medial joint line, medial retinaculum,
12 lateral retinaculum, and Plica.⁸² Dr. Stanfield thought that Plaintiff would be a
13 good candidate for knee replacement but should exhaust conservative treatments
14 such as injections and radiofrequency ablation due to her age.⁸³

15
16 ⁷⁷ AR 408-409.

17 ⁷⁸ AR 409.

18 ⁷⁹ *Id.*

19 ⁸⁰ AR 410.

20 ⁸¹ *Id.*

21 ⁸² *Id.*

22 ⁸³ AR 411.

1 On March 17, 2019, Plaintiff underwent an intracapsular lidocaine injection
2 to the right knee performed by Arash Motagi, DO.⁸⁴ On examination, Plaintiff's
3 gait was antalgic.⁸⁵ Plaintiff was diagnosed with chronic pain in her right knee
4 "due to significant amount of degeneration and arthritis in her right knee."⁸⁶
5 Dr. Motaghi noted that Plaintiff had tried conservative therapies with minimal
6 relief and he recommended a right knee genicular nerve block, as doctors were
7 attempting to postpone knee replacement due to Plaintiff's age.⁸⁷ On May 15, 2019,
8 Plaintiff returned to Dr. Motaghi, reporting only mild relief from the nerve block
9 performed.⁸⁸ Dr. Motaghi assessed Plaintiff with chronic pain of the right knee and
10 opined that she received eighty-percent relief from the genicular nerve blocks.⁸⁹
11 Dr. Motaghi suggested that Plaintiff should undergo radiofrequency ablation.⁹⁰

12 On June 10, 2019, Plaintiff presented to Dr. Stanfield reporting that her
13 recent radiofrequency ablation had given her only minimal relief and that she
14
15

16 ⁸⁴ *Id.*

17 ⁸⁵ AR 415.

18 ⁸⁶ *Id.*

19 ⁸⁷ *Id.*

20 ⁸⁸ AR 416-417.

21 ⁸⁹ AR 420.

22 ⁹⁰ *Id.*

1 needed a steroid injection in her knee.⁹¹ On examination, Plaintiff had tenderness
2 at the medial joint line, medial retinaculum, lateral retinaculum, and Plica.⁹²
3 Dr. Stanfield administered an injection and assessed her as suffering from primary
4 osteoarthritis of the right knee.⁹³ He opined that Plaintiff was young for a knee
5 replacement surgery but it was likely her only option due to significant
6 degenerative changes in her knee.⁹⁴ Dr. Stanfield recommended that Plaintiff try
7 to manage symptoms for as long as possible before scheduling the knee
8 replacement.⁹⁵ On September 11, 2019, Plaintiff presented to Dr. Stanfield seeking
9 an injection for her right knee.⁹⁶ On examination, Plaintiff exhibited pain and
10 crepitus with motion.⁹⁷ Dr. Stanfield noted that Plaintiff had attempted injections,
11 radiofrequency ablation, bracing, and anti-inflammatories, as well as physical
12 therapy but not gotten relief.⁹⁸ Because pain symptoms were interfering with her
13
14

15 ⁹¹ AR 421.

16 ⁹² *Id.*

17 ⁹³ AR 422.

18 ⁹⁴ *Id.*

19 ⁹⁵ *Id.*

20 ⁹⁶ AR 422-423.

21 ⁹⁷ AR 423.

22 ⁹⁸ AR 424.

1 activities of daily living, Plaintiff was seeking permanent treatment.⁹⁹
2 Dr. Stanfield noted that conservative measures had failed and that he had
3 counseled against knee replacement if possible, but symptoms were severe and
4 conservative measures were not helpful, so knee replacement would be considered
5 in the summer.¹⁰⁰

6 *iii. Dr. Davis-Boozler*

7 On January 24, 2021, Plaintiff was examined by David Davis-Boozler, MD,
8 at the request of the Commissioner.¹⁰¹ Dr. Davis-Boozler noted that he reviewed
9 the records of Dr. Stanfield from June 10, 2019, and December 18, 2019.¹⁰²
10 Plaintiff reported that she had bilateral knee pain which progressed over the last
11 two to three years, and that she had a right knee replacement and later a
12 manipulation under anesthesia.¹⁰³ She also reported left foot pain due to a ganglion
13 cyst and chronic fatigue for the past twelve months.¹⁰⁴ Plaintiff reported that she
14 lived with her three children and ran a babysitting service, and was able to do such
15
16

17 ⁹⁹ *Id.*

18 ¹⁰⁰ AR 425.

19 ¹⁰¹ AR 850-856.

20 ¹⁰² AR 851.

21 ¹⁰³ *Id.*

22 ¹⁰⁴ AR 852.

activities as cooking, cleaning, shopping, and yard work.¹⁰⁵ On examination, Plaintiff's blood pressure was elevated; she was appropriately dressed and showed no unusual habits or distress; she had a normal gait and was able to rise from a chair and the table without help; Plaintiff could walk on her heels and toes, balance, bend and squat halfway; straight leg testing was negative; motor function and strength were normal in all extremities; range of motion was normal in all extremities with the exception of limited flexion in the knees; and sensory examination was normal in all extremities.¹⁰⁶ Dr. Davis-Boozler diagnosed Plaintiff with bilateral knee pain with good prognosis; left foot pain with good prognosis; and chronic fatigue with good prognosis.¹⁰⁷

An X-ray of the left foot taken on January 26, 2021, indicated no acute injury.¹⁰⁸

b. Mental impairments

i. Three Rivers Therapy

On July 24, 2019, Plaintiff presented to Diana Crane, care coordinator, for initial evaluation.¹⁰⁹ Plaintiff reported that she had PTSD and it was difficult to

¹⁰⁵ *Id.*

¹⁰⁶ AR 853-855.

¹⁰⁷ AR 855.

¹⁰⁸ AR 857.

¹⁰⁹ AR 593.

1 leave her home following a divorce in 2017.¹¹⁰ Plaintiff reported stresses due to her
2 relationship with her ex-husband and finances.¹¹¹ Plaintiff reported that she was
3 supporting herself, her children, and her mother with what she made as a full-time
4 daycare manager.¹¹² Ms. Crane assessed Plaintiff with generalized anxiety
5 disorder and major depressive disorder, single episode, mild.¹¹³

6 On September 10, 2019, Plaintiff presented to ARNP Debra Pugh for initial
7 evaluation.¹¹⁴ Plaintiff reported that the medication she had been taking for the
8 last two years was not effective and that she was struggling financially after a
9 divorce and having to subsist on her salary as a full-time daycare manager.¹¹⁵
10 Plaintiff reported that she completed high school and attended some college.¹¹⁶
11 Plaintiff also reported that she had stress because after her divorce she was not
12 allowed visitation with her step-daughter, and her ex-husband was seeking custody
13 of their shared children. On mental status examination, Plaintiff was dressed
14 appropriately; had good eye contact; had normal speech volume and rate; had a
15

16 ¹¹⁰ *Id.*

17 ¹¹¹ *Id.*

18 ¹¹² *Id.*

19 ¹¹³ AR 596.

20 ¹¹⁴ AR 573.

21 ¹¹⁵ *Id.*

22 ¹¹⁶ AR 574.

1 sad, depressed and anxious mood; had intact insight, judgment, memory,
2 concentration, and thought content; had no homicidal or suicidal ideations; but had
3 a poor body image.¹¹⁷ ARNP Pugh diagnosed Plaintiff with generalized anxiety
4 disorder and major depressive disorder, single episode, mild.¹¹⁸

5 On October 29, 2019, Plaintiff presented to ARNP Pugh for evaluation.¹¹⁹
6 ARNP Pugh noted a lot of stress related to Plaintiff's financial situation.¹²⁰ On
7 mental status examination, Plaintiff was dressed appropriately; had good eye
8 contact; had normal speech volume and rate; had a sad, depressed and anxious
9 mood; had intact insight, judgment, memory, and concentration; and had normal
10 thought content with no homicidal or suicidal ideations.¹²¹ ARNP Pugh diagnosed
11 Plaintiff with generalized anxiety disorder and major depressive disorder, single
12 episode, mild.¹²² One week later, on November 5, 2019, Plaintiff presented to
13 counselor Nelda Gonzalez¹²³, who found on mental status examination that
14 Plaintiff had appropriate dress, good eye contact, rapid/pressured and slurred
15

16 ¹¹⁷ AR 574-575.

17 ¹¹⁸ AR 576.

18 ¹¹⁹ AR 556.

19 ¹²⁰ *Id.*

20 ¹²¹ AR 557.

21 ¹²² AR 559.

22 ¹²³ It does not appear that Ms. Gonzalez has a title or license.
23

1 speech, euthymic mood, tangential thought content, intact insight and judgment,
2 intact memory, and intact attention and concentration.¹²⁴

3 On December 16, 2019, Plaintiff presented to Nelda Gonzalez, who found on
4 mental status examination that Plaintiff had appropriate dress, good eye contact,
5 rapid/pressured and slurred speech, euthymic mood, tangential thought content,
6 intact insight and judgment, intact memory, and intact attention and
7 concentration.¹²⁵ The next day, on December 17, 2019, Plaintiff presented to ARNP
8 Pugh, and reported that the medication she had been taking for the last two years
9 was not working.¹²⁶ Plaintiff complained of mostly financial struggles following
10 divorce from her husband and the need to live off her earnings as a day care
11 manager.¹²⁷ On mental status examination, Plaintiff had appropriate dress, good
12 eye contact, normal speech, depressed and anxious mood, goal directed and
13 organized thought content, intact insight and judgement, intact memory, intact
14 concentration and attention and no homicidal or suicidal ideation.¹²⁸ ARNP Pugh
15
16
17

18 ¹²⁴ AR 552-555.

19 ¹²⁵ AR 540.

20 ¹²⁶ AR 532.

21 ¹²⁷ AR 532.

22 ¹²⁸ AR 533-534.

1 diagnosed generalized anxiety disorder and major depressive disorder, single
2 episode, mild.¹²⁹

3 On January 16, 2020, Plaintiff presented to Nelda Gonzalez.¹³⁰ On
4 examination, Ms. Gonzalez noted that Plaintiff had rapid and slurred speech and a
5 tangential thought process, but otherwise found normal mental status findings.¹³¹

6 On January 28, 2020, Plaintiff presented to Nelda Gonzalez.¹³² Her main
7 complaint was the stress of raising her children after divorce from her husband.¹³³
8 Plaintiff reported that she was not taking medication for her anxiety.¹³⁴ On
9 examination, Ms. Gonzalez again noted that Plaintiff had rapid and slurred speech
10 and a tangential thought process, but otherwise found normal mental status
11 findings.¹³⁵

12
13
14
15
16 ¹²⁹ AR 535.

17 ¹³⁰ AR 519.

18 ¹³¹ AR 524.

19 ¹³² AR 514.

20 ¹³³ *Id.*

21 ¹³⁴ *Id.*

22 ¹³⁵ AR 518.

1 On February 25, 2020, Plaintiff presented to ARNP Pugh for follow up.¹³⁶
2 Plaintiff reported full-time work as a day care manager in her home.¹³⁷ On
3 examination Plaintiff was alert, concentration was “ok”, appearance was
4 appropriate, behavior was normal, speech was normal, mood was depressed and
5 anxious, insight and judgment were intact and concentration and attention were
6 intact.¹³⁸ ARNP Pugh assessed generalized anxiety disorder and major depressive
7 disorder, single episode, mild.¹³⁹ On February 27, 2020, Plaintiff presented to
8 Nelda Gonzalez with complaints that she felt anxious when her children were
9 visiting their father.¹⁴⁰ On examination, her mental status was in normal limits
10 other than tangential thought and speech abnormalities.¹⁴¹

11 On May 26, 2020, Plaintiff presented to ARNP Pugh.¹⁴² She reported worry
12 that her children would need to remote learn due to the virus and reported that she
13 had a knee replacement.¹⁴³ On examination, Plaintiff was clean, friendly, alert, and
14

15 ¹³⁶ AR 502.

16 ¹³⁷ *Id.*

17 ¹³⁸ AR 502-503.

18 ¹³⁹ AR 505.

19 ¹⁴⁰ AR 495.

20 ¹⁴¹ AR 500.

21 ¹⁴² AR 486.

22 ¹⁴³ *Id.*

1 had good eye contact, appropriate mood and affect, normal thought process and
2 content, normal speech, intact concentration and attention, and good insight.

3 On July 27, 2020, Plaintiff presented to ARNP Pugh.¹⁴⁴ She reported
4 annoyance that her children were not doing work at home due to Covid.¹⁴⁵ On
5 examination, she was alert and oriented, and ARNP Pugh opined that her
6 functional status was good.¹⁴⁶ Plaintiff was clean, friendly, alert, and had good eye
7 contact, appropriate mood and affect, normal thought process and content, intact
8 concentration and attention, and good insight.¹⁴⁷

9 On August 3, 2020, Plaintiff reported stress and anxiety due to children's
10 visitation with their father.¹⁴⁸ She reported that she was still watching children.¹⁴⁹

11 On September 3, 2020, Plaintiff presented to Nelda Gonzalez and reported
12 that her depression was improving.¹⁵⁰ On examination, Plaintiff was appropriately
13 dressed and cooperative, her mood was euthymic, she was goal-directed with
14
15

16 ¹⁴⁴ AR 464.

17 ¹⁴⁵ AR 464.

18 ¹⁴⁶ AR 464-465.

19 ¹⁴⁷ AR 465-466.

20 ¹⁴⁸ AR 462.

21 ¹⁴⁹ *Id.*

22 ¹⁵⁰ AR 450.

1 normal thought content and intact insight, and her memory and attention were
2 intact.¹⁵¹

3 On October 5, 2020, Plaintiff presented to ARNP Debra Pugh stating that
4 “things are going crazy.”¹⁵² Plaintiff reported that her prescribed medications were
5 helping her anxiety and depression.¹⁵³ On examination, Plaintiff was clean,
6 friendly, alert, had good eye contact, had appropriate mood and affect, had normal
7 speech, had normal gait, was goal directed with normal thought content, had intact
8 attention and concentration, had good insight and judgment, and had good
9 immediate memory.¹⁵⁴ ARNP Pugh assessed generalized anxiety disorder, and
10 major depressive disorder, single episode, mild.¹⁵⁵

11 On October 7, 2020, Plaintiff presented to Nelda Gonzalez reporting extreme
12 anxiousness and irritability due to her struggles with homeschooling her
13 children.¹⁵⁶ On examination her behavior, mood, speech, thought content, insight,
14 and concentration were within normal limits.¹⁵⁷ On October 14, 2020, Plaintiff
15

16 ¹⁵¹ *Id.*

17 ¹⁵² AR 446.

18 ¹⁵³ *Id.*

19 ¹⁵⁴ AR 447-448.

20 ¹⁵⁵ AR 448.

21 ¹⁵⁶ AR 444.

22 ¹⁵⁷ *Id.*

1 presented to Ms. Gonzalez and reported that she was having hard time with home
2 schooling her children.¹⁵⁸ On examination, Plaintiff was appropriately dressed and
3 cooperative, her mood was euthymic, she was goal directed with normal thought
4 content and intact insight, and her memory and attention were intact.¹⁵⁹ On
5 October 28, 2020, Plaintiff presented to Ms. Gonzalez and reported that she was
6 having a hard time home schooling her children.¹⁶⁰ On examination, Plaintiff was
7 appropriately dressed and cooperative, her mood was euthymic, she was goal
8 directed with normal thought content and intact insight, and her memory and
9 attention were intact.¹⁶¹

10 In June of 2021, Plaintiff reported financial struggles following the loss of
11 two of the children she babysat.¹⁶² On July 21, 2021, Plaintiff presented to Ms.
12 Gonzalez and reported that she applied for a job and had a panic attack during a
13 job shadow.¹⁶³ However, on July 12, 2021, Plaintiff presented to ARNP Pugh, and
14 reported that things are better; that her depression and anxiety were improving;
15
16

17 ¹⁵⁸ AR 442.

18 ¹⁵⁹ *Id.*

19 ¹⁶⁰ AR 440.

20 ¹⁶¹ *Id.*

21 ¹⁶² AR 1105.

22 ¹⁶³ AR 1096.

1 and that she has days that are manageable and other days not so good.¹⁶⁴ On
2 mental status examination, Plaintiff was friendly and cooperative, with
3 appropriate mood and affect, normal speech, normal speech, goal directed thought
4 process, normal thought content, intact concentration, intact judgment, good
5 insight, intact memory, and good attention span.¹⁶⁵ Throughout 2021, Plaintiff
6 presented to Ms. Gonzalez with reports that she was anxious and stressed due to
7 parenting issues and her mother's health.¹⁶⁶

8 On February 10, 2022, Plaintiff presented to Nelda Gonzalez, and reported
9 that her ex-husband had a new girlfriend and that the additional stress of her son's
10 behavior in school increased her anxiety.¹⁶⁷ On March 21, 2022, Plaintiff presented
11 to Ms. Gonzalez, reporting that her ex-husband was re-marrying and she was
12 upset.¹⁶⁸ Ms. Gonzalez noted that Plaintiff's primary impairment was frequent
13 anxiety.¹⁶⁹ On April 25, 2022, Plaintiff presented to Ms. Gonzalez and reported
14
15

16 ¹⁶⁴ AR 1098.

17 ¹⁶⁵ AR 1098-1099.

18 ¹⁶⁶ AR 1065, 1068, 1070, 1072, 1074, 1076, 1078, 1080, 1082, 1084, 1086, 1088, 1090,
19 1092, 1094, 1096, 1101, and 1103.

20 ¹⁶⁷ AR 1072.

21 ¹⁶⁸ AR 1065.

22 ¹⁶⁹ *Id.*
23

1 feeling stressed and anxious due to parenting issues.¹⁷⁰ Ms. Gonzalez noted little
2 progress in reaching Plaintiff's goals.¹⁷¹

3 On March 17, 2022, Plaintiff presented to ARNP Gloria Olsson seeking care,
4 and reporting that she had not been seen for two years since her former provider,
5 Dr. Pugh, left the practice.¹⁷² Plaintiff reported frequent headaches since being off
6 medications and dysphoric mood and anxiety.¹⁷³ On examination, ARNP Olsson
7 opined that Plaintiff had normal mood and affect as well as normal behavior.¹⁷⁴ On
8 March 25, 2022, Plaintiff presented to ARNP Olsson and reported that she felt
9 good on her medication and was not as emotional.¹⁷⁵ On examination, Plaintiff had
10 normal mood and affect and normal behavior.¹⁷⁶ On April 13, 2022, Plaintiff
11 returned to ARNP Olsson for follow-up and reported that she was having
12 headaches.¹⁷⁷ Plaintiff's blood pressure was elevated and on examination she had
13
14

15 ¹⁷⁰ AR 1060.

16 ¹⁷¹ AR 1061.

17 ¹⁷² AR 1109.

18 ¹⁷³ *Id.*

19 ¹⁷⁴ AR 1110.

20 ¹⁷⁵ AR 1112.

21 ¹⁷⁶ AR 1112-1113.

22 ¹⁷⁷ AR 1114.

1 normal behavior and normal mood and affect.¹⁷⁸ ARNP Olsson noted that
2 depression had improved and increased the dosage of Venlafaxine to address
3 headaches.¹⁷⁹

4 On June 28, 2022, LMHC Rikki Cook, the clinical director for Three Rivers
5 Therapy, completed a Mental Residual Functional Capacity Form.¹⁸⁰

6 *ii. Dr. Linda Lindman*

7 On November 12, 2020, Linda Lindman, PhD, examined Plaintiff at the
8 request of the Commissioner.¹⁸¹ Plaintiff reported depression that began in her
9 twenties and current symptoms of lack of motivation, fatigue, feelings of
10 worthlessness and hopelessness, and irritability.¹⁸² Plaintiff reported the following
11 symptoms of anxiety: jitteriness, excessive worry, sleep problems, and poor
12 concentration.¹⁸³ She reported that her symptoms worsened after her marriage
13 broke up three years prior.¹⁸⁴ Plaintiff reported that problems with her children
14
15

16 ¹⁷⁸ AR 1115.

17 ¹⁷⁹ *Id.*

18 ¹⁸⁰ AR 1122-1126.

19 ¹⁸¹ AR 598-604.

20 ¹⁸² AR 598.

21 ¹⁸³ *Id.*

22 ¹⁸⁴ *Id.*

1 increased symptoms and engaging in hobbies relieved them¹⁸⁵ Plaintiff reported
2 being in special education but having attended college.¹⁸⁶ She reported that she
3 watched her own children and babysat for six other children and had done so for
4 the past three years.¹⁸⁷ On examination, Plaintiff was appropriately dressed, her
5 attitude was open and agreeable, her behavior was unremarkable, her mood and
6 affect were anxious, her speech was normal and thought process was goal directed,
7 she was oriented, her memory was good, her fund of knowledge was within normal
8 limits, her concentration was not impaired, and she was able to engage in abstract
9 thinking.¹⁸⁸ Plaintiff stated that she needed no assistance with activities of daily
10 living.¹⁸⁹ Dr. Lindman diagnosed adjustment disorder with depressed mood and
11 anxiety.¹⁹⁰

12 Dr. Lindman opined that Plaintiff is able to reason and understand; that she
13 is able to adapt; that her immediate memory is mildly impaired; that her remote
14 and recent memory are unimpaired; that her attention and concentration are
15 unimpaired; her ability to interact with coworkers and the public is not impaired;

17 ¹⁸⁵ AR 599.

18 ¹⁸⁶ *Id.*

19 ¹⁸⁷ *Id.*

20 ¹⁸⁸ AR 600-601.

21 ¹⁸⁹ AR 601.

22 ¹⁹⁰ AR 602.

1 her ability to maintain regular attendance is not impaired; her ability to complete a
2 normal work week is not impaired; and that her ability to deal with stress is mildly
3 impaired if it deals with complex work-related decisions.¹⁹¹

4 4. Analysis

5 a. The ALJ's consideration of Dr. Davis-Boozler's opinion
6 regarding Plaintiff's ability to stand

7 Dr. Davis-Boozler examined Plaintiff at the request of the Commissioner on
8 January 24, 2021.¹⁹² Dr. Davis-Boozler conducted a fairly thorough examination
9 and reviewed treatment records from Dr. Stanfield which documented a total knee
10 replacement in Plaintiff's right leg.¹⁹³

11 Dr. Davis-Boozler assessed that Plaintiff is capable of walking at least four
12 hours, has no limitation in sitting, does not need an assistive device, can lift twenty
13 pounds occasionally and ten pounds frequently.¹⁹⁴ He listed the following postural
14 limitations: no climbing or balancing and occasional stooping, kneeling, crouching
15 and crawling.¹⁹⁵ He opined that Plaintiff had no manipulative limitations and no
16
17

18 ¹⁹¹ AR 602-603.

19 ¹⁹² AR 850-856.

20 ¹⁹³ *Id.*

21 ¹⁹⁴ AR 855.

22 ¹⁹⁵ AR 855-856.

1 environmental limitations.¹⁹⁶ With regard to the limitation to sitting, Dr. Davis-
2 Boozler noted that the four-hour limitation to sitting might increase or relax based
3 upon Plaintiff's recovery from right knee arthroplasty.¹⁹⁷

4 The ALJ found Dr. Davis-Boozler's opinion somewhat persuasive and in
5 doing so stated the following reasoning:

6 The opinion of David Davis-Boozler, M.D. is somewhat persuasive. (Ex.
7 13F). Dr. Davis-Boozler opines that the claimant is limited to light
8 work; can stand/walk for *at least* four hours in an eight-hour workday;
9 and can occasionally stoop, kneel, crouch, and crawl. (Ex. 13F). This
10 opinion is supported by Dr. Davis-Boozler's own examination, during
11 which the claimant demonstrated limited flexion of the knees and
12 slightly reduced strength of the right lower extremity. (Ex. 13F, Page
13 5). It is also generally consistent with the overall record, which
14 reflects that the claimant has on occasion demonstrated an antalgic
15 gait. (Ex. 4F, Page 15). However, his opinion is somewhat vague in
16 that he opined the claimant could stand/walk "*at least*" 4 hours in an
17 8-hour day, which is not an opinion as to the *MOST* the claimant can
18 do. The undersigned is charged with establishing a residual functional
19 capacity of the *MOST* the claimant can do. Based upon the overall
20 record with generally normal gait and normal strength, as well as,
21 documented improvement following a surgery only 7 months after the
22 alleged onset date, the undersigned concludes the record supports that
23 claimant can stand/walk the typical requirement for light work and
would not be limited to less (such as only 4 hours).

24 The ALJ's reasoning is flawed for two reasons. First, the ALJ errs in stating
25 that Dr. Davis-Boozler's opinion that Plaintiff can stand "at least" four hours is
26 vague. When read in context the opinion it is not vague and clearly reflects that
27 Dr. Davis-Boozler opined that, at the time of his examination of Plaintiff, she was

28 ¹⁹⁶ AR 856.

29 ¹⁹⁷ AR 855.

1 not capable of completing the standard six-hours standing or walking required for
2 light work. Context is crucial as “treatment records must be viewed in light of the
3 overall diagnostic record.”¹⁹⁸

4 Dr. Davis-Boozler was a consultative examiner who examined Plaintiff and
5 rendered opinions at the request of the Commissioner. As an experienced
6 consultant for the Administration, he was familiar with the regulations and
7 policies and was aware that the exertional limitations of light work required
8 standing or walking for six hours. He did not opine that Plaintiff was capable of
9 standing and walking for six hours. Dr. Davis-Boozler stated clearly that Plaintiff
10 was not fully recovered from her right knee replacement and that at the time of her
11 examination she could reasonably be expected to be able to stand and/or walk for
12 “at least” four hours, indicating that the ability to stand or walk for longer periods
13 was not clear pending recovery.

14 Second, the ALJ’s reasoning is flawed because she failed to understand Dr.
15 Davis-Boozler’s clear opinion that Plaintiff had not fully recovered from her right
16 knee replacement and that for the period prior to Plaintiff’s surgery and for, by the
17 ALJ’s reasoning, at least seven months thereafter she was further limited in her
18 ability to function. The records indicate that Plaintiff’s function improved following
19 her right knee replacement but that prior to the surgery she was quite limited. A
20 claimant’s improvement with treatment is “an important indicator of the intensity

21
22 ¹⁹⁸ *Ghanim*, 763 F.3d at 1164.

1 and persistence of . . . symptoms.”¹⁹⁹ Symptom improvement, however, must be
2 weighed within the context of an “overall diagnostic picture.”²⁰⁰

3 The ALJ erred by discounting both Plaintiff’s symptom reports and
4 Dr. Davis-Boozler’s opinions regarding her ability to walk for the entire alleged
5 disability period. The record does not show that Plaintiff’s symptoms with regard to
6 her right knee improved until at the very least seven months after her surgery, and
7 if Dr. Davis-Boozler’s opinion is to be given full-credit, even as of January 2021
8 Plaintiff had not improved to the extent that she could engage in light work.

9 Despite Dr. Davis-Boozler’s statement that Plaintiff was not fully recovered
10 from her surgery and that she was capable of standing and walking at least four
11 hours but not longer, the ALJ relied upon her own judgement as to the additional
12 limitations which might have resulted from Plaintiff’s recovery. This is error.
13 First, there is no indication that the ALJ has medical training which would allow
14 her to interpret the raw medical data and make her own medical assessment of the
15

16 ¹⁹⁹ 20 C.F.R. § 416.929(c)(3). *See Warre v. Comm’r of Soc. Sec. Admin.*, 439 F.3d
17 1001, 1006 (9th Cir. 2006) (“Impairments that can be controlled effectively with
18 medication are not disabling for the purpose of determining eligibility for SSI
19 benefits.”).

20 ²⁰⁰ *Holohan v. Massanari*, 246 F.3d1195, 1205 (9th Cir. 2001); *see also Lester v.*
21 *Chater*, 81 F.3d 821, 833 (9th Cir. 1995) (“Occasional symptom-free periods ... are
22 not inconsistent with disability.”).

1 functional limitations following Plaintiff's surgery.²⁰¹ Secondly, the ALJ has not
2 explained how she arrived at her conclusions that Plaintiff was capable of standing
3 and walking for the six hours provided for in her formulated RFC. Instead, she
4 offered a conclusory opinion of the expected limitations.²⁰²

5 The Court concludes that remand is warranted for the ALJ to properly
6 consider the opinion evidence and to evaluate the record as a whole, including the
7 period preceding Plaintiff's surgery and the period of recovery immediately
8 following it.

9 *b. The ALJ's consideration of LMHC Cook's opinions*

10 On June 28, 2022, LMHC Cook completed a Mental Residual Functional
11 Capacity Assessment and identified herself as "clinical director."²⁰³ LMHC Cook
12 opined that Plaintiff would have no limitation in the ability to maintain socially
13 appropriate behavior.²⁰⁴ LMHC Cook opined that Plaintiff would be moderately
14 limited regarding the following: the ability to remember locations and work-like
15

16
17 ²⁰¹ ALJs cannot usurp the role of doctors when interpreting medical evidence,
18 particularly highly technical medical evidence. *Trevizo v. Berryhill*, 871 F.3d 664,
19 683 (9th Cir. 2017).

20 ²⁰² See *Garrison v. Colvin*, 759 F.3d 995, 1013-14 (9th Cir. 2014).

21 ²⁰³ AR 1121-1125.

22 ²⁰⁴ AR 1123.

1 procedures; the ability to understand short, simple instruction; the ability to carry
2 out short, simple instructions; the ability to sustain an ordinary routine; the ability
3 to make simple work-related decisions; the ability to ask simple questions; the
4 ability to accept instruction or criticism; the ability to get along with coworkers; the
5 ability to set realistic goals; and the ability to adapt or manage herself.²⁰⁵ LMHC
6 Cook opined that Plaintiff would have a marked limitation regarding the following:
7 the ability to understand and remember detailed instructions; the ability to carry
8 out detailed instructions; the ability to maintain attention and concentration; the
9 ability to perform activities within a schedule; the ability to work in coordination
10 with others; the ability to complete a normal workweek without interruption and
11 without unreasonable breaks; the ability to interact with the public; the ability to
12 respond appropriately to changes in the work setting; the ability to be aware of
13 hazards; and the ability to travel in unfamiliar places.²⁰⁶ LMHC Cook opined that
14 Plaintiff would be off-task 12-20 percent of the time and would be absent two days
15 per month.²⁰⁷

16 The ALJ found LMHC Cook's opinions not persuasive and in doing so
17 reasoned as follows:

18 Ms. Cook opines that the claimant has marked limitations in all four
19 areas of "paragraph B" criteria and will be off task for up to 20% of the

20 ²⁰⁵ AR 1122-1124.

21 ²⁰⁶ AR 1122-1124.

22 ²⁰⁷ AR 1125.

1 workday. (Ex. 21F). This opinion is not supported by any noted
2 examination performed by Ms. Cook. It is also not consistent with the
3 overall record, which reflects that the claimant has demonstrated
4 normal memory, mood, attention, and insight. (Ex. 2F, Page 16; Ex. 3F,
5 Page 9; Ex. 4F, Page 11). Moreover, the opinion is specifically
6 contradicted by the findings during the consultative examination (Ex.
7 10F) which was performed by a PhD, who has much more training,
8 experience and expertise than Ms. Cook's LMHC credentials.²⁰⁸

9 Plaintiff argues that the ALJ erred in finding that Ms. Cook's opinions were
10 contradicted by Dr. Lindman's findings because the ALJ rejected Dr. Lindman's
11 findings for being inconsistent with the record; erred in reasoning that LMHC
12 Cook's opinions were inconsistent with a limited number of examinations; and
13 erred in reasoning that LMHC Cook had not personally examined Plaintiff,
14 without further inquiring what relationship LMHC Cook had to Plaintiff or her
15 counselor, Nelda Gonzalez.

16 First, the Court concludes that Plaintiff's arguments as to the ALJ's finding
17 that LMHC Cook's opinions were inconsistent with Dr. Lindman's findings is
18 without merit. The ALJ found that LMHC Cook's opinions were inconsistent with
19 Dr. Lindman's findings on examination, and not her opinions. But assuming that
20 she had found the opinions inconsistent, there was also no error because the ALJ
21 did not reject Dr. Lindman's opinions, as Plaintiff asserts, but rather found them
22 somewhat persuasive as opposed to fully persuasive. A finding that an opinion is
23 "somewhat persuasive" cannot reasonably be categorized as a rejection of that

²⁰⁸ AR 26.

1 opinion. The ALJ also did not err in reasoning that Dr. Lindman was better
2 qualified because Dr. Lindman is a licensed psychologist and therefore an
3 acceptable medical source, while LMHC Cook is not an acceptable medical source,
4 pursuant to the regulations.²⁰⁹ It is thus without question that Dr. Lindman was
5 more qualified than LMHC Cook. The opinion of an acceptable medical source is
6 ordinarily entitled to more persuasiveness than that of any non-acceptable medical
7 source or nonmedical source.

8 Additionally, the ALJ did not err in considering that Dr. Lindman had
9 examined Plaintiff and LMHC Cook had neither examined nor treated her. The
10 regulations provide that while the ALJ must discuss the factors of consistency and
11 supportability, and that the ALJ may consider but is not obligated to discuss other
12 factors such as whether the source rendering an opinion had a treating or
13 examining relationship with Plaintiff.²¹⁰ The ALJ did nothing improper by
14 considering that Dr. Lindman had examined Plaintiff and LMHC Cook had not.

15 While the ALJ cited to a limited number of treatment notes when discussing
16 their inconsistency with LMHC Cook's opinions, it is notable that each of the
17 treatment notes cited provided which were inconsistent with LMHC Cook's
18 opinion. Moreover, the findings of the acceptable medical sources, ARNP Joshua
19 Anderson, ARNP Debra Pugh, and ARNP Gloria Olsson all indicated benign
20

21 ²⁰⁹ 20 C.F.R. § 416.902.

22 ²¹⁰ 20 C.F.R. § 416.920c

1 findings, which supported the ALJ's finding that the longitudinal record was not
2 consistent with LMHC Cook's opinions.

3 The Court finds no error in the ALJ's consideration of LMHC Cook's
4 opinions.

5 **5. Summary**

6 Because the ALJ did not give good reasons for her evaluation of the medical
7 opinions of Dr. Davis-Boozler, a remand is warranted.

8 **B. Plaintiff's Subjective Complaints: The Court finds the issue moot.**

9 Plaintiff argues the ALJ failed to properly assess her subjective complaints.
10 As discussed above, the ALJ failed to consider the medical record as a whole when
11 considering the medical opinions. Because the Court has remanded the case for
12 consideration of the record as a whole, the ALJ will be required to consider the
13 credibility of Plaintiff's subjective complaints.

14 **C. Remand for Further Proceedings**

15 Plaintiff submits a remand for payment of benefits is warranted. The
16 decision whether to remand a case for additional evidence, or simply to award
17 benefits, is within the discretion of the court."²¹¹ When the court reverses an ALJ's
18
19
20

21 ²¹¹ *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,
22 761 F.2d 530 (9th Cir. 1985)).
23

1 decision for error, the court “ordinarily must remand to the agency for further
2 proceedings.”²¹²

3 The Court finds that further development is necessary for a proper disability
4 determination. Here, it is not clear what, if any, additional limitations are to be
5 added to the RFC. Therefore, the ALJ should properly consider the opinion
6 evidence and make findings at each of the five steps of the sequential evaluation
7 process.

8 IV. Conclusion

9 Accordingly, **IT IS HEREBY ORDERED:**

- 10 1. The ALJ’s nondisability decision is **REVERSED**, and this matter is
11 **REMANDED** to the Commissioner of Social Security for further
12 proceedings pursuant to sentence four of 42 U.S.C. § 405(g).
13 2. The Clerk’s Office shall **TERM** the parties’ briefs, **ECF Nos. 11 and**
14 **15**, enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

15
16
17
18
19 ²¹² *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke* 379 F.3d at 595
20 (“[T]he proper course, except in rare circumstances, is to remand to the agency for
21 additional investigation or explanation”); *Treichler v. Comm’r of Soc. Sec. Admin.*,
22 775 F.3d 1090, 1099 (9th Cir. 2014).

1 IT IS SO ORDERED. The Clerk's Office is directed to file this order and
2 provide copies to all counsel.

3 DATED this 1st day of April 2024.

4 

5 EDWARD F. SHEA
6 Senior United States District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23